

Appendix D

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State of California
Office of the Attorney General
Department of Justice
Library and Courts Building, Sacramento 14
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Department of Conservation
Division of Forestry
State Office Building No. 1
Sacramento, California 95814

Attention: Mr. F. H. Raymond
State Forester

Re: Law Enforcement Fire Protection and
Clearance Requirements
Public Resources Code § 4105

Dear Mr. Raymond:

This is in reply to your memo of November 17, 1963, requesting the opinion of this office on the following two questions:

1. Does Public Resources Code section 4105 (all references will be to the Public Resources Code unless otherwise indicated), as added by Stats. 1963, Chapter 2038, apply within the boundaries of incorporated cities?
2. If the answer is yes, may the local fire chief or other enforcement agency exercise the authority granted to the State Forester in subdivision (b) to prescribe firebreaks in excess of 30 feet where extra hazardous conditions exist?

You have forwarded to this office a copy of the opinion of Harold W. Kennedy, County Counsel of the County of Los Angeles, dated November 26, 1963, in response to substantially the same questions by Chief K. E. Klinger of that county. We are in substantial agreement with the conclusions of the opinion so far as they relate directly to the above questions.

Section 4105 provides as follows:

Any person who owns, leases, controls, operates, or maintains any building or structure in, upon, or adjoining any mountainous area or forest-, brush-, or grass-covered lands or land covered with flammable material shall at all times do all of the following:

- (a) Maintain around and adjacent to such building or structure a firebreak made by removing and clearing away, for a distance of not less than 30 feet on each side thereof or to the property line, whichever is nearer, all flammable vegetation or other combustible growth. This subdivision does not apply to single specimens of trees, ornamental shrubbery, or similar plants which are used as ground cover, provided that they do not form a means of rapidly transmitting fire from the native growth to any building or structure.

- (b) Maintain around and adjacent to any such building or structure additional fire protection or firebreak made by removing all brush, flammable vegetation, or combustible growth which is located from 30 feet to 100 feet from such building or structure or to the property line, whichever is nearer, as may be required by the State Forester when he finds that because of extra hazardous conditions a firebreak of only 30 feet around such building or structure is not sufficient to provide reasonable fire safety. Grass and other vegetation located more than 30 feet from such building or structure and less than 18 inches in heights about the ground may be maintained where necessary to stabilize the soil and prevent erosion.
- (c) Remove that portion of any tree which extends within 10 feet of the outlet of any chimney or stovepipe.
- (d) Maintain any tree adjacent to or overhanging any building free of dead or dying wood.
- (e) Maintain the roof of any structure free of leaves, needles, or other dead vegetative growth.
- (f) Every chimney or stovepipe that is attached to any fireplace, stove, or other device that burns any solid or liquid fuel shall be provided and maintained at all times with a screen over the outlet. Such screen shall be constructed of nonflammable material with openings of not more than one-half inch in size.

Enacted as it was by a general act, this section is applicable everywhere in the state including incorporated cities, unless such application is otherwise qualified or restricted. See, Ex parte Beck, 162 Cal. 701, 711, 124 P. 543. There appear to be no provisions expressly or impliedly excluding incorporated cities from the area in which this section is to apply. In fact, it is quite clear from section 1 of chapter 2038, Stats. 1963, adding section 4105 to the code, that the purpose of the legislation is to protect life and property from fire in all parts of the state without reference to the political subdivision within which particular areas fall:

The Legislature of the State of California hereby finds and declares that the unrestricted use of grass-, grain-, brush-, or forest-covered land within the State is a potential menace to life and property from fire and resulting erosion.

See, also, section 3, chapter 2038, Stats. 1963. It is true, of course, that section 4162 provides that the requirements of article 5, chapter 1, division 4, of the code, are not to apply to the setting of fires on lands within any municipal corporation. However, section 4105 was not added to that article and the limits of section 4162 has no application to section 4105.

We conclude, therefore, that the provisions of section 4105 are applicable within the limits and boundaries of incorporated cities.

In answer to your second question, particular note is made of the fact that the authority under subdivision (b) of section 4105 to prescribe and require wider firebreaks in hazardous areas is expressly granted only to the State Forester. There appears, therefore, no cause or basis for implying that such authority may be exercised by any other person. The Legislature in the same statute adopting this section leaves no room for doubt when authority is given jointly to the State Forester and another agency to prescribe requirements to meet special conditions. For example, section 4107, added by Stats. 1963, chapter 2038, confers such authority to "the State Forester or the agency having primary responsibility for the fire protection" of the areas involved.

See, also, section 4106. The failure to expressly give authority to any person or agency other than the

State Forester in subdivision (a) of section 4105 under such circumstances doubly evidences the legislative intent that this authority is to be exercised only by the State Forester. It may also be noted that the power to prescribe such additional clearances is a discretionary power and consequently is personal to the State Forester and not subject to delegation by him to any other public officer such as a local fire chief.

While our conclusion is that subdivision (b) of section 4105 vests no authority in a local fire chief or responsible enforcement agency to require a firebreak in excess of 30 feet, it is our opinion that the matter can be handled by appropriate local ordinance, rule, or regulation. Section 4018, added by chapter 2038, provides:

Counties, cities and counties, cities, and districts may adopt ordinances, rules, or regulations to provide fire hazard conditions.

Hence, to meet local conditions a city, as well as a county, city and county, or a district may adopt an ordinance, rule, or regulations prescribing or requiring a firebreak in excess of the 30 feet required by subdivision (a) of section 4105.

Very truly yours,

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R. H. CONNETT
Deputy Attorney General

RHC:cb